

**WAUKESHA COUNTY  
MINUTES OF THE PARK AND PLANNING COMMISSION  
THURSDAY, JANUARY 27, 2005, 1:00 P.M.**

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**CALL TO ORDER**

Walter Baade, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present:     Walter Baade, Chairperson     Pat Haukohl     Gary Goodchild  
                               Walter Kolb                                 Ellen Gennrich  
                               Mareth Kipp (arrived at 1:05 p.m.)

Commission

Members Absent:     Betty Willert

Staff

Members Present:     Richard L. Mace, Planning and Zoning Manager  
                               James W. Kavemeier, Parks System Manager  
                               Jason Wilke, Senior Landscape Architect  
                               Kathy Brady, Secretary Supervisor

Guests Present:         Ralph Hibbard             John Taylor     James Schmidt     Jane Taylor  
                               Don Wilton                 Julie Sullivan

**PUBLIC COMMENT**

Chairperson Baade asked if anyone from the audience wished to address the Commission? There being no one, he moved to the next item on the agenda.

Mrs. Kipp arrived at 1:05 p.m.

•     **SVZ-1550 (Ralph Hibbard, Heaven City Development Co.) Village of Mukwonago, Section 19 (B-2 Local Business District to the R-3 Residential District)**

Mr. Mace presented the "Addendum to the Staff Report and Recommendation" dated January 27, 2005, and made a part of these Minutes. He pointed out the location of the property on the south side of C.T.H. "ES" in the Village of Mukwonago on the aerial photograph, and stated the petitioner is requesting to revise the conditions of the rezone approved by the Park and Planning Commission on October 7, 2004.

Mr. Mace indicated the Commission approved the rezoning at the October 7, 2004, meeting based upon the dedication of the lands along the Fox River to the County. Mrs. Haukohl asked if the conditions outlined in the "Preservation Restrictions and Trail Easement" document would be stated in the ordained clauses of the rezoning Ordinance, not referred to as an attachment or an exhibit? Mr. Mace replied, "No". Mrs. Haukohl expressed concerns that the conditions should automatically be stated in the ordained clauses of the Ordinance. Mr. Mace said that Exhibit "A" contains a "Staff Memorandum", various maps and the "Preservation Restrictions and Trail Easement" documents. He was unsure how to incorporate the above documents into the text of the Ordinance other than referencing it as an Exhibit. He explained, if the verbiage was outlined in the text of the Ordinance, it may need to be slightly revised at some point, which would result in the matter coming back before the County Board. Mrs. Haukohl expressed concerns regarding the buffers, areas of protection and the dedicated areas, since the developer retracted the original dedication offer. Mr. Kolb asked if the request was necessary? Mr. Mace replied, the Plan suggests there should be ownership by the County. The petitioner recognizes the fact that the "Preservation Restrictions and Trail Easement" document is a binding document, however, the question is, what form should it take? If the text is placed in the Ordinance and a change

is needed, it must come back before the County Board. He was under the impression that if the County adopts the Ordinance amendment with an attachment, the attachment becomes part of the Ordinance. Mrs. Gennrich said the restrictions outlined (preservation zone, buffer zone, etc.) in the "Preservation Restrictions and Trail Easement" document should be substantially the same for all greenway projects. A statement could be added to the Ordinance, which states that the project must follow the restrictions.

Mr. Holiday, developer, said the maps would become an exhibit to the easement document which would be recorded. Once the County determines the preferred route of the trail (either under the bridge or going to the east to C.T.H. "ES") the owner has agreed to sign the easement, which will be recorded. Mrs. Haukohl asked if a map would be attached as part of the Ordinance showing what exactly the proposed trail configuration would be? Mr. Mace referred to the map entitled "Proposed Recreational Easement", and explained the Preservation Restrictions and Trail Easement with a visual buffer would be the alternative to land dedication and in part of the Exhibit. Mrs. Kipp asked when it would be determined which direction the trail will reach? Mr. Mace answered that he was unsure. However, the Department of Natural Resources would determine whether there is enough room to go under the bridge so as not to cross the highway and the County Highway Department must also approve the route. Mrs. Kipp asked if there was a connection to the trail on the north side of C.T.H. "ES"? Mr. Mace responded, "Not at this point, however, ultimately there will be."

Mrs. Gennrich asked if the Preservation Zone is retained by the owner, to which Mr. Mace replied, "Yes, and would stay in a natural condition." Mrs. Haukohl asked if that would be deed restricted? Mr. Mace replied, "Yes". Mr. Goodchild asked, on a trail easement, if another party requests an easement on top of the County's Trail Easement such as a water, electric or cable utility, is it stated in the language that the County has the right to approve such a request? Mr. Mace replied that he was unsure. Mr. Kavemeier, Parks System Manager explained that if the trail was asphalted and there was a utility easement which was to be located within the County's easement it would have to be located outside of the paved area so as not to interfere with the use of the facility. He added, if there was a crossing of the pavement, it would be required to be restored to its original condition. Mrs. Haukohl asked if there is involvement, would the County review any other easements within the trail easement area? Mr. Kavemeier replied, "Yes, the County would have to be notified." Mr. Mace said there is not language in the "Preservation Restrictions and Trail Easement" stating that fact. Mrs. Haukohl suggested a condition be added to the document reflecting the abovementioned fact. The Commission agreed and also suggested that the Heaven City Development Company not be referred to "Heaven" in the document. Mr. Mace suggested a Condition "H" be added to the "Preservation Restrictions and Trail Easement" document stating the abovementioned concerns of the Commission. The specific language for the added Condition "H" would be worked out between Mr. Kavemeier and the Waukesha County Corporation Counsel. Mr. Kavemeier agreed. With respect to Mrs. Haukohl's question regarding the exhibits being incorporated into the ordained clauses of the Ordinance he felt it was inappropriate because as long as the document (Exhibit "A") is referenced, it becomes a part of the Ordinance. Mrs. Haukohl agreed.

Mrs. Haukohl asked why a Variance is required from the floodplain setback requirements from the Village of Mukwonago? Mr. Mace replied, because the houses would not be located 75' from the 100-Year Floodplain as configured. Mrs. Haukohl asked about the illegal filling violation which the Commission (at their October 7, 2004 meeting) had recommended be sent to the Waukesha County Corporation Counsel. Mr. Mace said the violation and rezone have not been advanced (since October 7, 2004), and Mr. Kavemeier and Mr. Holiday have been working out the details of the agreement. He knew eventually an addendum would be needed and the matter brought back before the Commission.

There was discussion regarding the illegal filling which would keep the basement level 4' to 6' above the floodplain level. Mrs. Kipp asked if it was appropriate to send the violation to the Corporation Counsel? Mr. Mace answered, "It would be the Commission's decision to do so."

*After discussion, Mrs. Kipp moved, seconded by Mrs. Haukohl and carried unanimously, for approval, in accordance with the "Addendum to the Staff Report and Recommendation" with an additional Condition "H" added to the Preservation Restrictions and Trail Easement document stating:*

*H. The Easement shall be non-exclusive. Grant/Developer may grant additional use of the Easement for utility purposes only. The County reserves the right of approval for any shared use of Easement, said approval not to be unreasonably withheld. The Trail Easement shall be superior to other uses, which shall not be inconsistent or incompatible with the County's use.*

*The Commission also recommended the illegal filling violation be referred to the Waukesha County Corporation Counsel for appropriate legal remedy.*

*The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

- **SZ-1557 (Waukesha County Dept. of Parks and Land Use-Parks System), Town of Summit, Section 24 (R-3 Residential District and C-1 Conservancy District to the P-I Public and Institutional District and C-1 Conservancy District)**

Mr. Mace presented the "Staff Report and Recommendation" dated January 27, 2005, and made a part of these Minutes. He pointed out the location of the property, north of Interstate Highway 94 and south of C.T.H. "DR" to the east of C.T.H. "P" in the Town of Summit on the aerial photograph.

Mr. Mace explained that the property contains open woodland and would be used for additional vehicle parking, a restroom, a shelter building and a 10' paved recreational trail to continue the Lake County Trail corridor, ultimately connecting with the trails at the City of Oconomowoc and the City of Pewaukee. A public boat launch, a sewer pumping station and bathroom are located near the west end of the site. Mrs. Haukohl asked how many parking spaces are located at the existing public boat launch? Mr. Mace replied, approximately 16 or 17 parking spaces. A 14-car parking lot exists at the launch site for vehicles (cars only) in connection with the bike trail. Mrs. Haukohl asked if trees would need to be removed for the parking lot? Mr. Mace replied, some trees may need to be removed (minimally).

*After discussion, Mr. Goodchild moved, seconded by Mrs. Haukohl and carried unanimously, for approval, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

- **CU-88T (RSV Engineering) Town of Genesee, Section 26**

Mr. Mace presented the "Staff Report and Recommendation" dated January 27, 2005, and made a part of these Minutes. He pointed out the location of the property, northwest of the intersection of Holiday Road and C.T.H. "X" in the Town of Genesee on the aerial photograph, and stated the petitioner is requesting to terminate the existing Conditional Use.

Mr. Mace indicated the property was formerly a horse farm operation (Mainliner Stables) which included a boarding stable, training, rental/sales, an indoor/outdoor riding arena, a riding academy, office, parking of horse trailers, rental of the farmhouse, two barns and three sheds. The adjacent Lot 18 is developed with a single-family residence, which will remain. The petitioner is requesting to terminate the existing Conditional Use in order to develop a seven-lot subdivision with access from Holiday Road. Mrs. Kipp asked if all of the buildings would be removed? Ms. Sullivan, petitioner, replied the farmhouse and one shed will remain.

*After discussion, Mr. Goodchild moved, seconded by Mr. Kolb and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

• **PO-04-GNT-41 (LB Boss Construction) Town of Genesee, Section 14**

Mr. Mace presented the “Staff Report and Recommendation” dated January 27, 2005, and made a part of these Minutes. He pointed out the location of the property on Little John Drive in the Town of Genesee on the aerial photograph, and stated the petitioner is requesting a Site Plan/Plan of Operation for the construction of a new multi-tenant building.

Mr. Mace indicated the petitioners are proposing to construct a one-story building with four units, three of which would be leased to individual tenants and the petitioner would utilize one unit for personal storage. Mrs. Gennrich suggested the last sentence of the second paragraph in the “Staff Analysis” section should be re-worded to read as Condition No. 2 of the “Staff Recommendation” section. Mr. Mace agreed, and noted the sentence would be modified. Mr. Goodchild wondered why the Town of Genesee Plan Commission had not heard the request. A member of the audience said the Town requested the Park and Planning Commission hear the request first. He requested the owners name on the Staff Report and Recommendation be changed to Mike and Deborah Passino. Mr. Mace noted the correction would be made.

*After discussion, Mr. Goodchild moved, seconded by Mr. Kolb and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

• **(Don Wilton) Town of Eagle, Section 10**

Mr. Mace presented the “Decision Letter” dated August 30, 2004 and the “Staff Memorandum” dated August 19, 2004, and made a part of these Minutes. He pointed out the location of the property on S.T.H 67 and Wilton Road in the Town of Eagle on the aerial photograph and stated the petitioner is requesting approval for the creation of lots not abutting a public road.

Mr. Mace indicated at the August 19, 2004, meeting, the Commission denied the petitioner’s request for four lots not abutting a public road. The Commission requested the Planning and Zoning Division Staff correspond with the petitioner and that a Development Plan for the petitioner’s land holdings be submitted, and there be a single 66’ public road access for the lots in accordance with the density requirements of the Waukesha County Development Plan.

Mr. Wilton recently submitted a map showing the proposed lots served by private roads and the rest of his holdings. Mrs. Gennrich did not approve of the two driveways serving four lots, and wondered why a cul-de-sac could not be utilized. She asked if the 26-acre farmette could be divided further? Mr. Mace

replied “No, based on the density under the Plan.” Mr. Wilton said he was not interested in dividing the farmette because it has been in his family for 150 years. Mrs. Kipp asked if Lots 1 and 4 gain access off of the driveway or would they have access on Wilton Road? Mr. Mace replied that he was unsure. Mr. Wilton said there would be ingress/egress at the same point for all four parcels. Mr. Goodchild said as he understood it there would be four different driveways. Mr. Wilton said the Town enacted an amendment for a multi-use driveway, 18’ wide. Mr. Mace explained there would be one common entry shared by four persons. Mrs. Kipp and Mrs. Gennrich thought a cul-de-sac with a single entrance would be more appropriate. Mr. Mace pointed out the Town of Eagle is concerned with how many public roads they have and must maintain. Mr. Kolb said the petitioner meets the criteria for the lots and felt the request should be approved. Mr. Goodchild asked if the Town of Eagle Plan Commission approved the request? Mr. Mace answered, “I have no record of that”. Mrs. Gennrich, Mrs. Kipp, Mrs. Haukohl and Mr. Goodchild felt the request was not good planning, would create flag lots, and shared driveways may bring about possible neighbor conflicts. In addition, at the August 19, 2004, meeting the Commission asked that there be a single 66’ road access for no more than three lots on the subject 16 acres.

*After discussion, Mr. Kolb moved, seconded by Mrs. Kipp and carried by a vote of 5 to 1 to deny the petitioners request (Mr. Kolb voted for approval). The Commission felt a public road with a single cul-de-sac could better serve the lots.*

• **(James Schmidt) Town of Merton, Sections 12 and 13**

Mr. Mace presented the “Staff Memorandum” dated January 27, 2005, and made a part of these Minutes. He pointed out the location of the property on Park Drive in the Town of Merton on the aerial photograph and stated the petitioner is requesting after-the-fact approval for a retaining wall within 5 ft. of an adjacent property line.

Mr. Mace, read into the record a letter from Mr. Nowak (adjacent neighbor’s brother) and Trustee of the Gertrude E. Nowak Revocable Trust. The correspondence referred to a 10’ easement along the joint property line, which was granted to the Town of Merton in 1986 as a means of flood control. The Town installed an underground storm sewer from the road to drain to the lake. In addition, the Town installed railroad ties down the hill to the lake for erosion control, removed trees as needed, seeded and restored the surface to the lot line. In the correspondence, he referred to the railroad ties, which were rotted and removed at his request and that he and the petitioner agreed to a new retaining wall for erosion control at the known and agreed upon lot line. A new retaining wall was constructed on the accepted known historic lot line of 38 years of Nowak ownership.

Mr. Schmidt explained the retaining wall was necessary for erosion control. The neighbor (Mrs. Doyle) filed a complaint that the wall was located over the north lot line. If the retaining wall were moved, it would cause a 5’ gap of land which would erode to the lake. He would like to resolve the issue and has applied for an after-the-fact permit and is asking the wall be able to be located within 2’ of the north property line. Mr. Mace noted the Planning and Zoning Division Staff visited the site on December 9, 2004, and it was noted the wall appears to be closer than 5’ from the north property line and could possibly be over the property line. However, there is an on-going neighbor dispute regarding the actual location of the north property line. He asked Mr. Schmidt if he thought the surveyed lot line was in error. Mr. Schmidt replied the property has been surveyed three times and there has been a different survey each time. The surveyor states that erosion and shifting on the peninsula would never give a true lot line. He is currently in court with regards to the existing deck and the lot line.

Mr. Mace said an Assessor's Plat could be ordered for a specific area of dispute (to be completed by a surveyor) based upon the location of the lot lines and his record and research, which would become the official plat. All lots would then become part of the Assessor's Plat. There was discussion regarding who would pay for the survey, which lots would be included and who would order the survey to be completed. Mr. Mace said the County or the Town could order said Plat and decide whether or not there is a substantial issue with the location of the lot lines and each lot owner would be assessed their portion of the cost. Mr. Goodchild asked what would happen if the Assessor's Plat determined the retaining wall is on the neighbor's property, to which Mr. Mace replied the retaining wall would have to be removed. Mr. Schmidt agreed to abide by the decision of the Assessor's Plat. Mrs. Gennrich suggested Condition No. 1 be removed and replaced with language stating that the Planning and Zoning Division Staff and the Land Information Systems Staff analyze the neighborhood regarding lot line conflicts and determine if, and for what portion of the neighborhood an Assessors Plat would be necessary for. In addition, if the Plat determines the petitioner's retaining wall is too close to the lot line it would be required to be removed, otherwise, the wall must be located 2' from the property line. The Commission agreed for the Staff to determine whether an Assessor's Plat is necessary and present their findings to the Commission at a later date.

*After discussion, Mrs. Gennrich moved, seconded by Mrs. Kipp and carried unanimously, to remove Condition No. 1 and insert the following language:*

- 1. An analysis of the neighborhood regarding lot line conflicts shall be completed by the Planning and Zoning Division and the Land Information Systems Staff to determine if, and for what portion of the neighborhood an Assessors Plat would be necessary for, and upon review of the Staff's analysis and findings, a report shall be submitted to the Park and Planning Commission.*

*In addition, the Planning and Zoning Division Staff will present their findings to the Commission at a later date.*

• **(John Heintz-Taylor) Town of Genesee, Section 29**

Mr. Mace presented the "Staff Memorandum" dated January 27, 2005, and made a part of these Minutes. He pointed out the location of the property, north of C.T.H. "ZZ" and west of Grush Road in the Town of Genesee on the aerial photograph, and stated the petitioner is requesting the right to apply for an Unspecified Conditional Use Permit for vehicle parking/outside storage.

Mrs. Kipp excused herself from the meeting due to a conflict of interest.

Mr. Goodchild expressed concerns as to why the Town of Genesee had not heard the request. Mr. Mace indicated the Commission is being asked to allow Mr. Taylor the opportunity to apply for an Unspecified Conditional Use. No decision is being made to approve or deny the Conditional Use at this point. The portion of the property in question is a former gravel pit which contains no structures and was never restored. The property has been used as an "unauthorized dumping ground" by individuals in the area. Access to the area has recently been restricted and the site has been cleaned up. The request is to use the parcel as an alternative for outside parking for area residents to park their recreational vehicles, etc. A berm screens the property from the road. This use is allowed in certain zoning districts (Industrial, B-3, etc.) and there is no specific mention or provision in any other part of the Ordinance for the outside storage of recreational vehicles. The question is, does it fall within the category of an Unspecified Conditional Use and should the petitioner be allowed the right to apply for a Conditional Use. Mr. Taylor said the property is zoned Ag Preservation, however, this portion of the parcel is not

capable of being used as Ag. land, nor has it been for quite some time. He explained that he has cleaned up and limited access to the area and would like to recoup some of his expenses.

Mrs. Haukohl asked what the quality of the woods is on the property? Mr. Mace replied, the front portion of the property was former a gravel pit and the rear portion is currently farmed and did not know the species of the trees on the site. Mrs. Gennrich noted, aside from the area in question the petitioner has a reasonable use of his land. She expressed concerns about parking 138 vehicles on the site and complaints from the neighbors and did not think this was an appropriate use for the property. Mr. Taylor said he determined 138 parking spaces based on the size of the parking space with a 16' entrance egress for one acre of land. His plans were not to have 138 parking spaces because of the topography on the site. He foresees starting with five to ten parking spaces and no valuable trees (oak or hickory) would be removed. Mr. Goodchild expressed concerns with storing vehicles outside (not in buildings) with regard to vandalism. Mrs. Gennrich asked if security fencing would be installed? Mr. Taylor replied, the entrance is gated, but there are no plans to fence the area unless it is conditioned. Mrs. Haukohl wondered if the area would have lighting for security purposes. Mr. Taylor replied, that he did not want to be offensive to any neighbors. Mrs. Gennrich reiterated, that the use is not appropriate for the site and should be located in an industrial park. Mr. Kolb asked if the vehicles could be seen from the road and if so, fencing and lighting should be required to avoid possible vandalism. Mr. Taylor responded, there is a significant amount of existing trees and shrubs and a berm, which provide screening along the excavated area. He added, there would be no permanent changes to the topography or permanent structures. Mrs. Gennrich asked if the property was part of the future extractive uses on the Land Use Plan? Mr. Mace answered, "No, and pointed out on the map the extractive categories surrounding the site."

*After discussion, Mr. Goodchild moved, seconded by Mrs. Haukohl and carried by a vote of 4 to 1 for approval to allow the petitioner the right to apply for an Unspecified Conditional Use Permit (Mrs. Gennrich voted against and Mrs. Kipp did not vote due to a conflict of interest).*

#### **ADJOURNMENT**

*With no further business to come before the Commission, Mrs. Kipp moved, seconded by Mr. Kolb to adjourn at 3:25 p.m.*

Respectfully submitted,

Ellen Gennrich  
Secretary

EG:kb